

10/517,457  
Response to Office Action of March 15, 2006  
Via facsimile 571-273-8300  
Date of Deposit: June 15, 2006

Attorney Docket Number DE 020148

Remarks

Claims 1, 3-8, 10 and 11 are here amended. Support for amendment to claim 1 is found in claims 1 and 7 as originally filed. Support for amendment to claim 3 is found in claims 1-3 as originally filed. Support for amendment to claim 4 is found in claims 1-4 as originally filed. Support for amendment to claim 5 is found in claims 1-3 and 5 as originally filed. Support for amendment to claim 6 is found in claims 1-3 and 6 as originally filed. Support for amendment to claim 7 is found in claims 1-3 and 7 as originally filed. Support for amendment to claim 8 is found in claims 1-3 and 8 as originally filed. Support for amendment to claim 10 is found in claims 1-3 and 10 as originally filed. Support for claim 11 is found in claims 1-3 and 11 as originally filed.

Claims 1-11 remain pending. No new matter has been added, and no new material presented that would necessitate an additional search on the part of the Examiner.

Applicants note with appreciation that the Office Action finds claim 3 allowable if amended to independent form to include all of the subject matter of the claims on which it depends including intervening claims.

Accordingly, claim 3 is here amended to include the subject matter of claims 1 and 2. Applicants therefore request that a notice of allowance be granted, at least with respect to claim 3 as here amended and its dependent claims.

Specification

The Office Action on page 2, ¶ 1 objects that the title is "not descriptive." The title is here amended to read, "Systems for aptitude tests for testing an object for its intended application," which is clearly indicative of the invention to which the claims are directed.

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The Office Action on page 2, ¶ 2 states that a substitute specification in proper idiomatic English and in compliance with 37 C.F.R. 1.52(a) and (b) be submitted. Applicants assert that the specification as originally filed is written in compliance with 37 C.F.R. 1.52(a) and (b), and request additional information from the Examiner with regard to specific instances of non-idiomatic English.

Nevertheless, Applicants here amend paragraphs from pages 3-5 of the specification.

Before analyzing the prior art references cited in the Office Action, Applicants believe that a brief description of the claimed subject matter would be of use to the Examiner.

Independent claim 1 as here amended is directed to an aptitude test system which is suitable for testing an object in respect of its aptitude for an actual intended application. The system includes at least one object which is provided with a data carrier on which data associated with the object is stored. The system also includes a test device which includes a reading apparatus whereby the data of the data carrier can be transferred to a computer which is coupled to the reading apparatus (the data being or including aptitude data which characterizes one or more permissible applications for the associated object). The computer has access to actual application data which characterizes a concrete application envisaged for the relevant object. The computer evaluates the aptitude data of the relevant object and the current application data for the aptitude testing of the relevant object and outputs a release signal when the object is suitable for the intended application and/or an alarm signal when the object is not suitable for the intended application. The system is characterized in

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that the aptitude data includes a date of expiry of the object and that the application data includes the current date. The computer generates the alarm signal when the date of expiry of the object has been passed when the aptitude test is carried out

Independent claim 3 as here amended is directed to an aptitude test system which is suitable for testing an object in respect of its aptitude for an actual intended application. The system includes at least one object which is provided with a data carrier on which data associated with the object is stored. The system also includes a test device which includes a reading apparatus whereby the data of the data carrier can be transferred to a computer which is coupled to the reading apparatus (the data being or including aptitude data which characterizes one or more permissible applications for the associated object). The computer has access to actual application data which characterizes a concrete application envisaged for the relevant object. The computer evaluates the aptitude data of the relevant object and the current application data for the aptitude testing of the relevant object and outputs a release signal when the object is suitable for the intended application and/or an alarm signal when the object is not suitable for the intended application. The system is characterized in that test device is coupled to a processing device which processes the relevant object, or a packing of the object, in dependence on the result of the aptitude test. The system is further characterized in that the object includes the packing and the processing device is arranged to open the packing, and the processing device opens the packing only when the computer outputs the release signal.

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Claims as here amended are novel

The Office Action on pages 2-5, ¶ 4 rejects claims 1, 2, 4-9 and 11 under 35 U.S.C. § 102(e) as being anticipated by Chung (U.S. patent application number 11/018,646, filed Dec. 20, 2004).

Chung, U.S. patent application number 11/018,646, filed Dec. 20, 2004

Chung shows methods of tracking medication and verifying that the appropriate medication is being dispensed. Particularly, Chung shows “a system and method [...] useful for tracking an article or object at one or more stations over a transport path.” Chung, p.2, paragraph 34. Through the use of “smart tags” and tracking stations, Chung’s system monitors medication as it moves along a transport path. Ibid., p. 5, paragraph 65.

Chung does not show a system that generates an alarm signal when a date of expiry has passed. In particular, Chung does not show a system in which the aptitude data includes a date of expiry of the object and the application data includes the current date.

According to the *Manual of Patent Examining Procedure*, “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Manual of Patent Examining Procedure* § 2131 (8th ed., Rev. 4, Oct. 2005), citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q. 2d 1051, 1053 (Fed. Cir. 1987).

Thus, the standard for rejection under 35 U.S.C. § 102 is identity.

Chung fails to show a system in which the aptitude data includes a date of expiry of the object and the application data includes the current date and the computer generates an alarm signal when a date of expiry has passed. Therefore, claim 1 as here amended is not

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anticipated by Chung. Claims 2, 4-9 and 11 depend directly or indirectly on claim 1 and incorporate all of the subject matter of this claim, and therefore these claims are also not anticipated.

Additionally, claims 4-9 and 11 as here amended depend directly or indirectly from claim 3, which was not rejected under 35 U.S.C. § 102. Rejection of claims 4-9 and 11 as here amended is therefore moot, and can be withdrawn for this reason also.

Applicants respectfully request that rejection of claims 1, 2, 4-9 and 11 under 35 U.S.C. § 102 be withdrawn.

Claims are not obvious

The Office Action on pages 5-6, ¶ 6 rejects claim 10 under 35 U.S.C. § 103(a) as obvious in light of Chung in view of Boecker et al. (U.S. patent application number 10/892,874, filed July 16, 2004).

Claim 10 as here amended depends from claim 1 or claim 3 as here amended, which are characterized above. Claim 1, as here amended, includes subject matter from claim 7.

Chung is characterized above.

Boecker et al., U.S. patent application number 10/892,874, filed July 16, 2004

Boecker shows a method and an apparatus for a portable medical analyzer. See Boecker, p. 1, paragraph 10. In particular, Boecker shows a system comprising a sampling module (including a lancet), an assay sensor module, analytical detector module and a communication module. Ibid., p. 5, claim 1. Claim 10 of Boecker shows a "method for portable medical analysis" including obtaining a fluid, housing the fluid in a cartridge, positioning the cartridge into an analytical detector module, obtaining information,

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displaying the information on a local module and transferring the information to a remote location. See *Ibid.*, p. 6, claim 10.

The *Manual of Patent Examining Procedure* states: “[t]o establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure.” [emphases added]. *Manual of Patent Examining Procedure* §2142; *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q. 2d 1438 (Fed. Cir. 1991).

Neither Chung nor Boecker teaches or suggests a system that maintains both the date of expiry of an object and the current date, and neither teach or suggest a computer that generates an alarm signal when the date of expiry has passed, as is the subject matter of Applicants' claim 1 as here amended. Similarly, neither Chung nor Boecker teaches or suggests a system in which a processing device opens the packing of an object only when the computer outputs the release signal, as is the subject matter of Applicants' claim 3 as here amended. Because Chung and Boecker, alone or in combination fail to teach or suggest the limitations in claims 1 and 3, those claims as well as claim 10, which is dependent on claim 1 or claim 3 are not obvious.

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For any of the above reasons, Applicants assert that claim 10 is not obvious, and further assert that a *prima facie* case of obviousness has not been made because the combination of the cited prior art does not teach or suggest all of the elements of claim 1 or claim 3 as here amended. Applicants respectfully request that the rejection of claim 10 under 35 U.S.C. § 103(a) be withdrawn.

Summary

On the basis of the foregoing reasons, Applicants respectfully submit that the pending claims are in condition for allowance, which is respectfully requested.

If there are any questions regarding these remarks, the Examiners are invited and encouraged to contact Applicants' representative at the telephone number provided.

Respectfully submitted,

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